
(1992) 09 SC CK 0030

In the Supreme Court Of India

Case No : Civil Appeal No. 1557 of 1978

Bhoir Industries Ltd. and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 03-09-1992

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 3, 3(3), 452, 452A, 454

Citation : (1992) 5 JT 272 : (1992) 2 SCALE 455 : (1993) 2 SCC 131 Supp : (1992) 2 UJ 526

Hon'ble Judges : N. M. Kasliwal, J;Kuldip Singh, J

Bench : Division Bench

Advocate : P.H. Parekh, H.S. Parihar and Manik Karanjawala, for the Appellant;

Final Decision : Allowed

Judgement

N.M. Kasliwal, J.—This appeal by grant of special leave is directed against the judgment of Gujarat High Court dated 10.1.1977. The High Court partly allowed the writ petition filed by the appellants and quashed the imposition and recovery of octroi duty from the appellants for the period from 1.12.1973 to 31.3.1974 being bad in law and directed the respondent-Municipal Corporation of the city of Baroda to refund the amount of octroi duty collected from the appellants during the aforesaid period and dismissed the petition involving challenge regarding the imposition and collection of octroi duty for the period commencing from 1.4.1974.

2. On 1.4.1966, the Baroda Municipality was converted into a Corporation under the Bombay Provincial Municipal Corporations Act, 1949. The Municipal Corporation used to levy octroi as per the rules framed under the Bombay Municipal Burroughs Act, 1925 by issuing different Notifications u/s 493 read with Appendix - IV of the Bombay Provincial Municipal Corporations Act 1949, (hereinafter referred to as 'the Act'). The Act was amended by the Gujarat Act XVI of 1970 on 31.12.1970. By this amendment Section 452-A was inserted in the Act. By the said Section 452-A power was conferred on the Government of Gujarat to make suitable provisions by order on alteration of limits of a city.

3. By Notification dated August 18, 1973, issued under Sub-section (3) of Section 3 of the Act the Government of Gujarat proposed to alter the limits of the Baroda Municipal Corporation so as to include within the limits of the said Corporation the area shown in Schedule. 'A' to the Notification. On the day of issuance of Notification dated August 18, 1973, the new area sought to be included in the limits of the Municipal Corporation was lying within the Gram Panchayat. The Development Commissioner of the Gujarat Government as such issued a Notification on 16.10.1973 under Sub-section (2) of Section 9 of the Gujarat Panchayat Act, 1961, excluding the aforesaid areas from the Gram Panchayat. The present appellants among others submitted their objections against the inclusion of the aforesaid areas and after taking them into consideration, the Government of Gujarat issued a final Notification dated 15.11.1973 in the Panchayat and Health Department in exercise of the powers conferred by Sub-section (3) of Section 3 of the Act directing that the aforesaid areas should form part of the Baroda Municipal Corporation with effect from 1st December, 1973.

4. Paragraph (viii) of Sub-section (1) of Section 452-A of the Act laid down that where the limits of a city are altered so as to include any area therein or exclude any area therefrom, the State Government may, notwithstanding anything contained in this Act or any other law for the time being in force, by order published in the Official Gazette, provide for all or any of the following matters, namely:-

(viii) the extension and commencement of all or any appointments, notifications, notices, taxes, orders, schemes, licensees, permissions, rules, bye-laws or forms made, issued, imposed or granted under this Act by, or in respect of, the absorbing local authority and in force within its area immediately before the notified day, to the area so included in a City under Clause (a), in supersession of corresponding appointments, notifications, notices, taxes, orders, schemes, licences, permission, rules, bye-laws or forms in force in such area immediately before the notified day

5. The State Government then issued an order on 30th March, 1974 in exercise of the powers conferred by paragraph (viii) of Sub-section (1) of Section 452-A of the Act which reads as under:-

Panchayats and Health Department. Sachivalaya, Gandhinagar, Dated 30th March, 1974.

ORDER

No.KP/74-79/BMC-1073/2593 p.:- Whereas by Government Notification, Panchayats and Health Department, No.KP/227-73/BMC-1267-11480/p, dated the 15th November 1973, the limits of the City of Baroda have been altered with effect on and from the 1st December, 1973 so as to include therein areas specified in Schedule 'A' to the said notification (hereinafter referred to as "the included area").

6. Now, therefore, in exercise of the powers conferred by paragraphs (viii) of Sub-section (1) of Section 452-A of the Bombay Provincial Municipal Corporations Act 1949 59 Bom. 1949, the Government of Gujarat hereby makes the following order, namely:

(1) All appointments, notifications, notices, taxes, orders, schemes, licences, permissions, rules, bye-laws or forms made, issued, imposed or granted under the said Act, by, or in respect of, the absorbing local authority, namely, the Municipal Corporation of the City of Baroda and in force within its area immediately before the 1st December, 1973 (hereinafter referred to as "the notification day") shall extend to, the commence in the include area, in supersession of corresponding appointments, notifications, notices, taxes, orders, schemes, licences, pcrmission,s rules, bye-laws or forms in force in the included area immediately before the notified day.

(2) All budget, estimates, assessments, assessment lists valuations, measurements or divisions made or authenticated in respect of the included area and in force within the included area immediately before the notified day shall continue with the included area, until they are superseded or modified.

By order and in the name of the Government of Gujarat,

Sd/- K.S. MEHTA, Under Secretary to the Government

7. The High Court held that in the present case after this issuance of the Notification dated 15.11.1973 under Sub-section (3) of Section 3 of the Act, the factory area of the petitioners formed part of the Baroda Municipal Corporation with effect from 1.12.1973 and the rules framed u/s 454 of the Act, as amended from time to time shall have effect as if enacted in the Act itself and they are of statutory application. Once these rules become part of the act, the entire Act including these rules would apply to the city limits of a corporation constituted u/ s 3 of the act. The High Court, however, took notice of the fact that in the factory area of the petitioners, no octroi duty was levied before its inclusion within the limits of the Municipal Corporation with effect from 1.12.1973. The High Court thus, held that the Municipal Corporation had not authority to levy and collect octroi duty upto 30.3.1974 but the date of issuance of the Notification under paragraph (viii) of Sub-section (1) of Section 452-A of the Act it was competent to do so.

8. We have heard Learned Counsel for the parties and have gone through all the relevant provisions of the Act. We are clearly of the opinion that Section 452-A of the Act which was inserted by Gujarat Act No. 16 of 1970 clearly provided that where the limits of a city arc altered so as to include any area, the State Government may, notwithstanding anything contained in the Act or any other law for the time being in force, by order published in the Official Gazette, provide for the extension and commencement of all or any appointments, notifications, notices, taxes, orders, schemes, licences, permissions, rules, bye-laws or forms made, issued, imposed or granted under this Act by, or in respect of, the

absorbing local authority and in force within its area immediately before the notified day, to the area so included in a city. The expression "absorbing local authority" means the local authority in the area under whose jurisdiction an area is included under Clause (a) of Sub-section (1).

9. It is an admitted position that the factory areas of the appellants were included in the area of the Baroda Municipal Corporation from 1.12.1973. The State Government had issued an order in exercise of the powers conferred by paragraph (viii) of sub-section of the power conferred by paragraph (viii) of Sub-section (1) of Section (10 of Section 452-A of the Act on 30th March, 1974 as reproduced above. Thereafter the Rules framed u/s 454 of the Act as amended from time to time shall have effect as if enacted in the Act itself and they had statutory force. Once these rules became part of the Act, the entire Act including these Rules applied to the city limits including the added area of a Corporation u/s 3 of the Act. Thus, after the issuance of the aforesaid order dated 30th March, 1974, the Municipal Corporation was fully competent and authorised to levy and collect octroi tax from the appellants also. We do not consider it necessary to go into other aspects of the question decided by the High Court.

10. The High Court has held that the Corporation was entitled to levy and collect octroi tax from the appellants from 1.4.1974 and we do not find any fault in the said view taken by the High Court. In the result, we find no force in this appeal and the same is dismissed with no order as to costs.